

FINAL STATEMENT OF REASONS

CLEAN Loan Program

May 23, 2002

Department of Toxic Substances Control
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FINAL STATEMENT OF REASONS (FSOR)

Senate Bill 667 (Stats. 2000, Ch. 912) along with Assembly Bill 254 (Stats. 2001, Ch. 548) and Senate Bill 468 (Stats. 2001, Ch. 549), established a low-interest loan program to facilitate the redevelopment of contaminated properties known as brownfields.

These statutes requires the Department, with the approval of the Secretary for Environmental Protection, to establish the Investigating Site Contamination Program (ISCP) and the Cleanup Loans and Environmental Assistance to Neighborhoods Program (CLEAN). The purpose of these programs are to provide loans to finance the preparation of Preliminary Endangerment Assessments of brownfield properties and eligible underutilized properties in urban areas (ISCP Loans), and to provide loans to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible properties (CLEAN loan).

The Department has adopted on an emergency basis, and proposes to finalize, regulations to implement the ISCP and CLEAN Loan Programs and specify procedures for the approval of and repayment of loans under these programs. The emergency regulations were effective on January 18, 2001.

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

In accordance with Government Code section 11346.5(a)(3)(B), DTSC has determined there are no existing federal regulations or statutes comparable to the proposed regulations.

STUDIES RELIED ON

These regulations interpret and make specific certain statutory provisions and do not rely on any particular study, report, or document.

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption is available for review with the rulemaking file. The Notice of Exemption will be filed with the State Clearinghouse upon adoption of the regulations.

ALTERNATIVES CONSIDERED

DTSC considered two alternatives:

1. Recommended Alternative: Develop regulations to implement the statutory

requirements and clearly define the application and project oversight process.

2. Do Nothing: Using the statutory language to administer the program would not be sufficient because there is lack of detail in how the program is to be administered.

Selection of the second alternative would not lessen the impact on small business, because the proposed regulations do not impose any additional requirements.

Public comments were expressed during the development of the emergency regulations, as well as at two DTSC-sponsored workshops held in Glendale, California on June 19, 2001 and in Sacramento, California on June 21, 2001, and were considered when drafting the proposed regulations

DETAILED STATEMENT OF REASONS

Four documents are proposed to be incorporated by reference: "Preliminary Endangerment Assessment: Guidance Manual" June 1999 (DTSC); American Society for Testing and Materials (ASTM), "Standard Practice for Phase I Environmental Site Assessments: Phase I Environmental Site Assessment Process", (Designation: E1527-00, dated May 10, 2000) and DTSC Forms 1290 and 1291 (dated 10/01). These documents are readily available from DTSC or ASTM. The documents are proposed to be incorporated by reference because they are lengthy and because duplication in the regulatory text would be cumbersome and impractical.

In accordance with Government Code Section 11346.2 (b), this Final Statement of Reasons includes a statement of the specific purpose and rationale for the Agency's determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed. This statement and rationale follow.

1. Chapter 47: Loan Program.

These regulations add new Chapter 47, Article 1, Sections 68200 through 68213, and Appendix 1, Title 22, Division 4.5, California Code of Regulations. The new chapter and article are necessary to establish the Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Program.

2. Section 68200: Purpose.

This section establishes the purpose of the Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Program. This section is necessary to specify that this

program promotes actions necessary to respond to the release or threatened release of a hazardous material on a Brownfield, as defined, or Eligible Underutilized Property.

This section also establishes that there are two Loan Programs: the Investigating Site Contamination Program (ISCP) and the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program. This provision of this section is necessary to specify the two Loan Programs established by legislation.

3. Section 68201: Overview; Administering Agency.

This section provides an overview of the Administering Agencies that will be authorized to conduct the oversight on the property as provided under section 68207. The Administering Agencies will be the Department of Toxic Substances Control (Department), the State Water Resources Control Board (State Board), a Regional Water Quality Control Board (Regional Board), or a Local Oversight Program Agency under contract with the State Water Resources Control Board,.

This section also provides an overview of the two Loan Programs. Subsections 68201(d) and 68201(e) provide the reader with a general understanding of the key elements of the ISCP and CLEAN Loan Programs.

4. Section 68202: Definitions. The following modifications were made to section 68202:

This section establishes definitions for this Article 1. This section is necessary to govern the interpretation of this Article 1.

New definitions were added to the final text to reflect new legislation changes from Chapter 548, Statutes of 2001 (Assembly Bill 254) and Chapter 549, Statutes of 2001 Senate Bill 468. The new definitions are:

68202 (a): This subsection establishes that “Account” means the Cleanup Loans and Environmental Assistance to Neighborhoods Account, pursuant to subdivision (b) of section 25395.20 of the Health and Safety Code.

68202(b): This subsection establishes that the “Administering Agency” means either the Department, the State Board, a Regional Board, or a Local Oversight Program Agency.

68202 (f)(1) A minor clarification was made regarding the locations of eligible “Brownfield” properties. The term “Urbanized” was changed to “Urban Area” and is defined in section 68202 (ss).

68202(h): This subsection establishes that “Cleanup and Abatement Order” means an order issued by a Regional Board pursuant to section 13304 of the Water Code.

68202(i): This subsection establishes the CLEAN Loan Program as the program which approves and implements loans under section 25395.22 of the Health and Safety Code.

68202(k): This subsection establishes that “Director” means the Director of the Department of Toxic Substances Control.

68202(n): This subsection establishes that “Eligible Contiguous Expansion” means contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following: a small business, a nonprofit corporation, or a small business incubator.

68202(o)(2)(C)4: A minor change was made on the definition of “Underutilized Property” which eliminated the word “affordable” in the definition of housing requirements. The new definition reads “Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code.

68202(o)(2)(C)5: A minor change was made to the definition of “Underutilized Property” which added open space and habitat area.

68202(u): This subsection establishes the “Investigating Site Contamination Program” or ISCP under section 25395.21 of the Health and Safety Code to provide Loans to conduct PEAs of Eligible Properties.

68202(w): This subsection establishes that a “Leaking Underground Fuel Tank” has the same meaning as “tank” as defined in section 25299.24 of the Health and Safety Code.

68202(cc): This subsection establishes that “No Longer in Operation” describes an Economic Activity that has ceased to function or to conduct operations of the type associated with the Economic Activity on the Property.

68202 (dd): Minor changes were made to the definition of “Operation and Maintenance” which allows the Regional Board or State Board to determine that work is necessary at a site.

68202 (ff): Minor changes were made to the definition of “Person” to add Local Government Agency or Local Agency to the other eligible definitions of a person.

68202(ll): This subsection establishes that “Regional Board” means the California Regional Water Quality Control Board.

68202(nn): This subsection establishes that “Secured Creditor Insurance” means insurance that meets the requirements of subdivision (k) of section 25395.40 of the Health and Safety Code.

68202(oo): This subsection establishes that “Small Business” means an independently owned or operated business, as defined in section 14837 of the Government Code, with 100 or fewer employees.

68202(pp): This subsection establishes that “Small Business Incubator” means a small business incubator that is undertaking a contiguous expansion of an operating industrial or commercial facility.

68202(qq): This subsection establishes that “State Board” means the State Water Resources Control Board.

68202(ss): Minor changes were made to this section to reflect statutory changes which defined eligible urban areas as a central city or a group of contiguous cities with a combined population of 50,000 or more, together with adjacent densely populated areas having a population of at least 1,000 persons per square mile, or an urbanized area as defined in paragraph (2) of subdivision (b) of section 21080.7 of the Public Resources Code

5. Section 68203: Loan Amounts: Interest. The following modifications were made to section 68203:

68203(e). A minor clarification was made which establishes that a Loan shall not be used to pay for Ineligible Costs as defined under subdivision (r) of section 68202. This subsection is necessary to be consistent with Health and Safety Code sections 25395.21(a) and 25395.22(a).

6. Section 68204: ISCP Waivers of Loan Repayment. The following modifications were made to section 68204:

68204(a)(2)(A) Minor changes were made to clarify the qualification of persons who can prepare a report of cost estimates for Response Actions as “any of the following who are licensed or registered to practice in California and who have demonstrated expertise in

Hazardous Material remediation and cost estimation: Class II environmental assessor, engineering geologist, licensed hazardous substance contractor, or licensed professional engineer”.

68204(b) Minor changes were made to clarify the role of the Loan Committee in the process to approve or deny an application from a Borrower for a Waiver of Loan Repayment. This subsection is necessary to specify the procedures the Department will use to process a request for a partial waiver of loan repayment.

7. Section 68205: Loan Application Content. The following modifications were made to section 68205:

Minor changes were made to the ISCP and CLEAN Loan application forms to include the information that would be needed if a regulatory agency other than the Department is the Administering Agency for the project. The loan applications forms were updated and are incorporated by reference.

68205(b)(7) A minor modification was made which changes the requirement that the owner of the property use the property as a security interest for the loan, and adds a requirement that the Applicant must provide documentation that the Applicant has control of the Property or the right to enter the Property to conduct environmental testing and cleanup activities.

68205(b)(11)(A)(4) Minor additions were made to this subsection to require any previous names of the business concern be added. This requirement is necessary to make it clear that the specified information required to evaluate the Applicant's eligibility includes information about the Property and the Applicant's business.

68205(b)(11)(B) Minor additions were made to this subsection to require that the Application for a CLEAN Loan Program Loan contain a description of all past and current administrative orders, agreements, judicial orders, and consent decrees that were issued by or entered into with any federal, State, or local agency including the State Board, or a Regional Board. This requirement is necessary to ensure that specified information is provided in order to evaluate the Applicant's eligibility includes information about past and current enforcement at the federal, State, and local levels.

68205(c)(1): This subsection was added to further clarify the loan content. The subsection requires documentation that demonstrates that the owner consents to the performance of the PEA of the Property. This is necessary to demonstrate that the Borrower has the authority to conduct the work for which the loan funds are being requested.

68205(c)(2): This subsection was added to further clarify the loan content. The subsection requires a copy of an agreement between the Property owner and the Applicant giving the Applicant an option to purchase the Property. This is necessary to demonstrate that the Borrower has the authority to conduct the work for which the loan funds are being requested.

68205(c)(3): This subsection was added to further clarify the loan content. The subsection requires documentation that the owner of the property agrees to use the Property as a security interest for the Loan to finance necessary Response Action at the Property, or agrees to provide another form of security that the Department determines will adequately protect the State's interest. This is necessary to make a satisfactory determination that there is sufficient collateral for the Loan.

68205(c)(4): This subsection was added to further clarify loan content requirements. The subsection requires if the Applicant is a Local Government Agency or a developer or prospective purchaser acting together with a Local Government Agency pursuant to an enforceable agreement, a demonstration to the Department that the Local Government Agency or developer or prospective purchaser acting together with the Local Government Agency pursuant to an enforceable agreement, has legal access to perform the PEA or other environmental assessment as determined by the Department at the Property, or will have legal access, prior to receiving Loan funds.

68205(g): Minor modifications were made to this subsection to require that an Application from a Local Government Agency or Local Agency, or from a Joint Powers Authority formed pursuant to chapter 5 of division 7 of title 1 of the Government Code (commencing with section 6500) or pursuant to other California statutory authority, shall also contain information necessary to recognize the unique fiscal operations of government agencies that are necessary to adequately evaluate an Applicant for the program.

68205(g)(1): Minor modifications were made to this subsection to require that an Application contain a description of the activities and responsibilities of the Local Government or Agency or the Joint Powers Authority. This is necessary to demonstrate a legal commitment on part of the governing body to enter into a loan agreement and to commit a pledge of revenue to service the debt. A public notice, public meeting and approval of the governing body is required to demonstrate a commitment of all parties involved that public funds will be used to service the debt.

68205(g)(2): Minor modifications were made to this subsection to require that loan applications include annual financial operating statements of the Local Government or

Agency or the Joint Powers Authority for three previous years. This is necessary to demonstrate a legal commitment on part of the governing body to enter into a loan agreement and to commit a pledge of revenue to service the debt. A public notice, public meeting and approval of the governing body is required to demonstrate a commitment of all parties involved that public funds will be used to service the debt.

8. Section 68206: Loan Application Process. The following modifications were made to section 68206.

68206(b): Minor modifications were made to this subsection which gave time frames of the Department's review of an application. It now states that "upon receipt of an application, the Department will determine whether the Application is complete, whether the Applicant is an Eligible Applicant, and whether the Property is an Eligible Property.

68206(g): This subsection was added to establish that if the Department determines that sufficient funding to meet the demand for CLEAN Loan Program Loans and ISCP Loans will not be available in a given fiscal year, the Department shall calculate a priority score to rank each Loan Application using scales that measure certain factors. This is necessary to provide loan Applicants with clarity on the factors that will be considered in ranking loan applications, and is consistent with Health and Safety Code section 25395.23(c).

68206(g)(1): This subsection establishes that twenty-five (25) percent of the priority score is based on the potential for the proposed Project to provide additional protection of public health and safety and the environment.

68206(g)(2): This subsection establishes that twenty-five (25) percent of the priority score to rank a Loan Application is the potential for proposed Project to enhance strategic community development using factors in the following subsections.

68206(g)(2)(A): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is creation of new jobs.

68206(g)(2)(B): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the potential for proposed Project to enhance strategic community development through the generation of additional tax revenue.

68206(g)(2)(C): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the potential for proposed Project to enhance strategic community development through the likelihood that the

proposed Project will stimulate additional redevelopment in adjacent areas as measured by improvement of local property taxes.

68206(g)(2)(D): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the degree to which implementation of the proposed Project will result in the development of new parks.

68206(g)(2)(E): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the potential for proposed Project to enhance strategic community development through the development of new schools.

68206(g)(2)(F): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the potential for proposed Project to enhance strategic community development through the development of affordable inner city housing and regional Infrastructure or projected Infrastructure needs, or otherwise promote infill development.

68206(g)(2)(G): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the economic viability of the proposed Project.

68206(g)(2)(H): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the degree to which the ability of the Loan Applicant to successfully perform the work at the proposed Project.

68206(g)(2)(I): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the degree to which the Loan Applicant is likely to repay the loan.

68206(g)(2)(J): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the consideration of the number and amounts of Loans approved for the Projects located in the same geographic area or community.

68206(g)(2)(K): This subsection establishes that one of the factors that will be considered in establishing a priority score to rank a Loan Application is the likelihood that the proposed Project would be completed if the CLEAN Loan Program Loan is not awarded.

68206(g)(2)(L): This subsection establishes that one of the factors that will be considered

in establishing a priority score to rank a Loan Application is the degree to which the ability to obtain conventional financing absent a Loan under this program.

68206(g)(3): This subsection establishes that twenty-five (25) percent of the priority score is based on community support as demonstrated by letters of support from city, county, other local agencies, residents or citizen groups, state or local elected officials, the general public, or other community groups.

68206(g)(4): This subsection establishes that twenty-five (25) percent of the priority score to rank a Loan Application is the degree to which financial support as demonstrated by approved loans, letters of commitments from other financial sources, and commitments for in-kind support from local agencies and citizen groups, or funding as set forth in paragraph (2) of subdivision (c) of section 25395.23 of the Health and Safety Code.

9. Section 68207: Administering Agency. The following section was established.

68207(a): This subsection was added to establish that the Department will be the Administering Agency for all Properties that are the subject of an ISCP Loan. This provides clarity that only the Department can be the administering agency for ISCP Loans.

68207(a)(1): This subsection establishes that for CLEAN Loan Applicants, the Department will provide written notice of the receipt of the Application to the State Board for any Application that indicates the Property contains a leaking underground fuel tank and to the Regional Board for any Property within the Regional Board's jurisdiction. This is necessary to establish the process by which the Department will notify the State Board and/or the Regional Board of loan applications for properties that are eligible for oversight by the State Board or the Regional Board.

68207(a)(2): This subsection establishes that the Department will be the Administering Agency of a CLEAN Loan for a Property that is subject to a release from a leaking underground fuel tank and the release is the principal threat at the Property, unless other factors specified in subsequent subsections are met.

68207(a)(2)(A)(B): This subsection outlines the conditions under which the Department would not be the Administering Agency for a CLEAN Loan for a Property that is subject to a release from a leaking underground fuel tank and the release is the principal threat at the Property. This section establishes the process by which the State Board and Regional Boards would request to be the Administering Agency for the Property that is the subject of a Loan.

68207(a)(B)(3): This subsection establishes that the Department will be the Administering Agency for a CLEAN Loan Application for a Property that is subject to one or more of the orders or agreements specified in subject to one or more of the orders or agreements specified in subdivision (b)(1) of section 25395.28 of the Health and Safety Code prior to the date the Application was submitted. The subsection also outlines the conditions under which the State Board and Regional Boards would request to be the Administering Agency for such a Property that is the subject of a Loan.

68207(b): This subsection establishes the State Board and a Regional Board, in consultation together with the Department, may request the Department to be the Administering Agency for a Property subject to section 25395.28 of the Health and Safety Code. This section establishes the process by which the State Board and Regional Boards would request that the Department be the Administering Agency for the Property that is the subject of a Loan.

68207(c): This section establishes a process by which the Department and Boards would determine the Administering Agency if both entities have issued a Cleanup and Abatement Order or other cleanup order or have entered into a written voluntary agreement for a site orders or agreements for the same site.

10. Section 68208: Loan Committee Review Process. The following modifications were made to section 68208.

Section 68208(a) was modified to establish the meeting schedule of the Loan Committee. This subsection is necessary to establish when the Loan Committee will meet to review loan applications. This is part of establishing the process, policy and operational procedures for the Loan Committee.

Section 68208(b) was modified to clarify that the Loan Committee will recommend approval or disapproval of the Application based on a set criteria.

Section 68208(b)(2) was modified to clarify that the Loan Committee will recommend approval or disapproval of the Application based on the Applicant's ability to meet the criteria of subdivision (d) of section 68206. This subsection is necessary to ensure that the application meets the eligibility requirements when the Loan Committee is making its determination.

11. Section 68209: Final Approval of Loan Applications. The following modifications were made to section 68209.

68209(b): A minor modification was made to this subsection to clarify that upon final approval, the Department and the Applicant shall enter into a Loan Agreement that meets the requirements of section 68210. The amount of funds disbursed and the schedule for disbursement shall be specified in the Loan Agreement. This requirement is necessary to be consistent with Health and Safety Code sections 25395.25(a) and (a)(1).

This subsection also requires that Loan funds shall not be disbursed until a Loan Agreement with the Department is executed in accordance with section 68210 and the appropriate oversight agreement with the Administering Agency is executed. This provision of this requirement is necessary to be consistent with Health and Safety Code section 25395.25(b).

68209(c) This subsection was added to the regulations and requires that upon the initial disbursement of funds, the Department will notify the Cal/EPA Site Designation Committee of which agency is the Administering Agency for a Property that is subject of a CLEAN Loan Program Loan. This is necessary to demonstrate the process for notifying the Site Designation Committee of the final determination of the Administering Agency.

12. Section 68210: Loan Agreement. The following modifications were made to section 68210.

68210(b)(2): This subsection was added to reflect additional information payment and prepayment information which will be added to the loan agreement language.

68210(b)(5): Minor modifications were made to this subject to clarify the requirement that a CLEAN Loan Program Loan must have a description of the Eligible Property that is securing the Loan or the alternative form of security approved by the Department. This requirement is based on standard commercial banking practices. A legal description of the property is required in loan documentation so the Department can legally secure the vesting and rights to the property.

68210(b)(6): Minor modifications were made to this subsection to clarify that the Borrower of a ISCP or CLEAN loan must also have a verification of an ISCP Environmental Oversight Agreement or a CLEAN Loan Program Response Action Agreement, or other enforceable agreement with the State Board or a Regional Board, as appropriate, in accordance with section 68211. This requirement is consistent with Health and Safety Code section 25395.25(b).

68210(b)(13): This subsection was added and requires proof of secured creditor insurance as required under subdivision (c) of section 25395.25 of the Health and Safety

Code. This is necessary to clarify that this type of insurance is required of all Borrowers in the CLEAN and ISCP Loan Program.

68210(b)(14): This subsection was modified to establish a provision that if the Borrower is not the owner of the property, but intends to purchase the property before the loan is satisfied, the purchase price of the property shall not exceed its estimated current fair market value, based on the estimated value of the property in a cleaned up state. This requirement is consistent with Health and Safety Code section 25395.25(a)(3).

68210(b)(15): A modification was made to this subsection to clarify that the loan may be secured by the property or an alternative form of security approved by the Department, and in accordance with the provisions of section 25395.26 of the Health and Safety Code.

68210(b)(16): This subsection was modified to require that if the Borrower recovers from a responsible party any costs incurred in taking a Response Action at the Property, any recovered funds shall be used first to repay the ISCP and CLEAN Loan Program loans and to repay monies waived under subdivision (c) of section 68204. This requirement clarifies Health and Safety Code section 25395.25(a)(2).

68210(b)(18): This subsection was added to require that if the Borrower uses Loan funds to pay the premium for environmental insurance products to facilitate development of the site, the type and limits of insurance coverage must meet the requirements of subdivision (a) of section 25395.22 of the Health and Safety Code. This provision is necessary to clarify the types and limits of insurance coverage that can be paid using CLEAN Loan Program Loan funds.

68210(c): This subsection was added to allow the Department foreclosure rights on property or on the alternative to a security interest. The subsection also specifies that any funds received through foreclosure or through the enforcement of any other security interest shall be deposited back into the CLEAN Loan Account.

68210(e): This subsection was added to show the terms of the loan repayment. This is necessary in facilitate the recovery of CLEAN loan funds being disbursed.

68210(e)(1): This subsection was added to clarify that the repayment period for an ISCP Loan shall begin 6 months after the first disbursement of the Loan funds. This subsection is necessary because it allows the Applicant/Borrower a reasonable amount of time for the PEA or other related site investigation work to be completed on the real property before repayment of the loan begins.

This subsection also established that the repayment period shall not exceed 3 years. This provision of the subsection is necessary to be consistent with Health and Safety Code Section 25395.21(e).

68210(e)(2): This subsection was added to establish that the repayment period for a CLEAN Loan Program Loan shall begin upon certification of the completion of the response action or 2 years after disbursement of the Loan funds, whichever comes first. This subsection is necessary because it allows the Applicant/Borrower a reasonable amount of time for work to be completed on the property before repayment of the loan begins.

This subsection also establishes that the repayment period shall not exceed 7 years. This provision of the subsection is necessary to be consistent with Health and Safety Code Section 25395.25(a).

68210(e)(3): This subsection was added to establish that if the Loan is to a Local Government Agency or Local Agency, or to a developer or prospective purchaser acting together with a Local Government Agency or Local Agency pursuant to an enforceable agreement, the Department may delay the beginning of the Loan repayment period for not more than the maximum allowable length of the Loan. This subsection provides clarification that the Department may consider changes in the repayment conditions for Loans made to Local Government Agencies.

68210(e)(4): Minor modifications were made to this subsection to establish that if either the Administering Agency, or the Department if the Department is not the Administering Agency, determines that the Borrower is not making sufficient progress in completing the PEA or response action, the Department may require Loan repayment to begin immediately. This subsection is necessary to provide the Department with recourse action when the loan receipt does not comply with the loan agreement.

68210(e)(5): This subsection was added to establish the notification and repayment procedures for a Borrower of as ISCP Loan that decides not to complete the PEA. This subsection is necessary to provide the Department with recourse action when the loan receipt does not comply with the loan agreement.

68210(f): This subsection was added to establish that the Loan Agreement for CLEAN Loan shall include the requirement that a responsible party complete all Response Actions as approved by the Administering Agency, even if the Loan amount does not cover the full cost of the Response Action. This subsection is necessary for completion of the project and to protect public health and safety and the environment.

68210(f)(2), 68210(f)(2)(A), 68210(f)(2)(B), 68210(f)(3): This subsection was added to establish procedures for Borrowers to notify the Department of cost over runs at the project, and provide documentation of current and projected appraised fair market value. For Borrowers that is not the responsible party, this subsection outlines the process by which the Borrower will notify the Administering Agency and the Department if information shows that the cost of completing the Response Action will exceed the originally projected cost and when the Borrower has determined that the Project is no longer economically feasible.

14. Section 68211: ISCP Environmental Oversight Agreements and CLEAN Program Response Action Agreements or Equivalent Agreements.

68211(a): Minor modifications were made to this subsection to clarify the contents of the ISCP Environmental Oversight Agreements, CLEAN Loan Program Response Action Agreements, and enforceable agreements with the State Board or a Regional Board. This subsection is necessary because it provides the Borrower a list of the required elements in the Department's oversight agreements/action agreements.

68211(a)(6): Minor modifications were made to this subsection to require that the ISCP Environmental Oversight Agreements and CLEAN Loan Program Response Action Agreements contain a description of any work that will be performed on the Property that will not be financed by Cleanup Loans and Environmental Assistance to Neighborhoods funding. This requirement is necessary to define the scope of the project and identify if there are additional activities on the property, which are not intended to be financed with the loan funds.

This subsection also requires that the ISCP Environmental Oversight Agreements and CLEAN Program Response Action Agreements contain a requirement that the Borrower shall reimburse the Administering Agency's costs for oversight of work outside the scope of the CLEAN loan. This requirement is necessary because it clarifies that the Borrower will have responsibility for paying the Department's oversight costs for work on the property, that is not funded by the loan funds.

68211(a)(6)(B): This subsection was added to require that all oversight, response action and other equivalent agreements contain a provision for the Administering Agency's approval of any Response Actions and any reports, plans, schedules, or other documents submitted under the Agreement. This section clarifies requirements for the agreements.

68211(a)(12): A minor modification was made to this subsection to require that the ISCP

Environmental Oversight Agreements and CLEAN Program Response Action Agreements contain a provision regarding the Department's oversight costs for the preparation and approval of a PEA on the property. This requirement is necessary because it clarifies to what extent the Borrower has the financial responsibility/obligation to pay for oversight costs.

68211(a)(12)(A): This subsection was added to clarify that a Borrower is liable for paying the Administering Agency's costs associated with the oversight of the preparation and approval of the PEA or Response Action unless the Department determines there are sufficient funds in the Account to reimburse the Administering Agency for that oversight.

68211(a)(12)(B): This subsection was added to clarify that if the Department determines that the Account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the PEA or the Response Action, the Borrower shall pay the Administering Agency's costs. It further establishes the Department's requirements to notify the Borrower if the Account has insufficient funds to pay for the oversight costs after a Loan Agreement has been executed, and that the Borrower will be billed for the Administering Agency's costs, as specified under section 25395.28 of the Health and Safety Code.

68211(a)(13) Minor modifications were made to this subsection to change the term "Department" to "Administering Agency." This subsection requires that the ISCP Environmental Oversight Agreements and CLEAN Loan Program Response Action Agreements contain any other provisions as agreed by the parties determined to be necessary by the Administering Agency. This requirement is necessary to make it clear that the parties to an ISCP Environmental Oversight Agreement or a CLEAN Loan Program Response Action Agreement may agree to additional terms and conditions specific to the Property.

68211(c)(2): A minor modification was made to this subsection to clarify that the scope of work includes tasks, such as Operation and Maintenance and land use restrictions, needed to complete all Response Actions.

68211(c)(4): This subsection was added in order to clarify that the ISCP Environmental Oversight Agreements and CLEAN Loan Program Response Action Agreements contain language that clearly establish the requirements for Borrowers that are responsible parties and Borrowers that are not responsible to complete the environmental assessment work or response action at the property. This provides additional clarity for Borrowers.

68211(c)(5): A minor modification was made to the subsection requiring that a CLEAN

Loan Program Response Action Agreement contain a provision for all removal actions, remedial actions, California Environmental Quality Act documentation, remedial design and implementation, and any other activities necessary for the Administering Agency's approval of the response action. This requirement is necessary to meet existing regulatory and statutory requirements for response actions and to outline the components of a complete workplan for a hazardous materials response action.

14. Section 68212: Compliance. The following modifications were made to section 68212.

68212(b): Minor modifications were made to this subsection to clarify that the Administering Agency and the Department, if the Department is not the Administering Agency, and other State agencies, including the State Controller, and the State Auditor, or their staff may conduct field inspections during the Project to verify compliance with the approved plans, specifications, and terms of the Loan Agreement, the ISCP Environmental Oversight Agreement, and the CLEAN Loan Program Response Action Agreement or other enforceable agreements with the State Board or a Regional Board. This subsection is necessary to assure that loan funds are expended in an appropriate manner as approved and that public health and the environment are adequately protected.

68212(e): Minor modifications were made to this subsection to require that the Borrower shall comply with all terms and conditions of the CLEAN Program Response Action Agreement and ISCP Environmental Oversight Agreement or other enforceable agreement with the State Board or a Regional Board. This requirement is necessary because of the Borrower's commitment to be consistent with mutually agreed upon terms.

15. Section 68213: Program Administration. The following modifications were made to section 68213:

This section was modified to clarify issues related to the administration of the program. It establishes that the Condition of the Loan, Loan Processes, Repayment, and Loan Closing Functions will be governed and administered by the Department. This section is necessary to ensure that the Loan Program is properly administered and complies with regulations and statutes.

16. Section 68214: Auditing of Expenditure of Loan Proceeds. The following modifications were made to section 68214:

68214(a): A minor modification to include the State Controller and State Auditor, or their designated representatives in the language of who may audit expenditures from the

Program.

68214(b): A minor modification was made to this subsection to require that the Borrower shall allow the Administering Agency or Department as appropriate, and other State agencies, including the State Controller's Office, and the State Auditor General's Office, or their designated representatives, absolute right of access to all of the Borrower's records pertaining to the Loan Agreement. This requirement is necessary to provide the various state agencies the right of access to the Borrower's records to audit.

This subsection also requires that any portion of the Borrower's records requested shall be made available to the designated auditors upon request. This section is necessary to have the records available to audit.

This subsection also requires that the Borrower shall retain all relevant financial records for at least three (3) years after termination of the Loan Agreement, or until completion of actions and resolution of all issues that may arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement, ISCP Environmental Oversight Agreement, or CLEAN Loan Program Response Action Agreement, whichever is later. This provision is required to establish a period of time for the Borrower to retain the records for review.

17. Modifies APPENDIX 1 TO CHAPTER 47, ARTICLE 1: from Urbanized Areas to Urban Areas.

This section of the regulations further describes Urban Areas in California. It is necessary to further describe Urban Areas in California because only properties in these designated areas are eligible to receive loans.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

Six organizations expressed either oral testimony or written comments to the Department during its 45-day comment period. Their questions or concerns about the program were addressed in the attached comment and response document. Four of the comments the Department clarified and made changes in the final regulation package. No comments were received during the first 15-day comment period, and one written comment was received during the 2nd 15-day comment period.

Complete set of DTSC's responses to comments on the 45-day notice and the second 15-day notice (four responses) are included.

Attachments